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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/836,369 10/20/97 SCHMIDT

V RSG 8379 US

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EXAMINER

HIRSHFELD, A

ART UNIT

PAPER NUMBER

2859

DATE MAILED:  
09/30/98

12

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
**08/836,369**

Applicant(s)  
**Schmidt**

Examiner  
**Andrew Hirshfeld**

Group Art Unit  
**2859**



☒ Responsive to communication(s) filed on Jun 29, 1998

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-11, 13, and 15 is/are pending in the application.

Of the above, claim(s) 9 is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-8, 10, 11, 13, and 15 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☒ Claims 9 are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☒ The specification is objected to by the Examiner.

☒ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☒ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☒ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 6, 11

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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**DETAILED ACTION**

***Election/Restriction***

1. Applicant's election without traverse of claims 1-11,13 and 15 in Paper No. 10 is acknowledged. It is noted, however, that claim 9 does not correspond to the elected embodiment of figure 1. Therefore, this claim has been withdrawn from further consideration by the examiner, as being drawn to a non-elected species of the invention.
2. The election of species requirement of the previous office action is hereby repeated and made final.

***Oath/Declaration***

3. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

The application number and date of the referenced PCT application is not correct. It appears that the correct citation should be PCT/EP96/03330, filed on July 29, 1996.

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### **Specification**

4. The following guidelines illustrate the preferred layout and content for patent applications. These guidelines are suggested for the applicant's use.

#### **Arrangement of the Specification**

The following order or arrangement is preferred in framing the specification and, except for the reference to "Microfiche Appendix" and the drawings, each of the lettered items should appear in upper case, without underlining or bold type, as section headings. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) Title of the Invention.
- (b) Cross-References to Related Applications.
- (c) Statement Regarding Federally Sponsored Research or Development.
- (d) Reference to a "Microfiche Appendix" (see 37 CFR 1.96).
- (e) Background of the Invention.
  - 1. Field of the Invention.
  - 2. Description of the Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) Brief Summary of the Invention.
- (g) Brief Description of the Several Views of the Drawing(s).
- (h) Detailed Description of the Invention.
- (I) Claim or Claims (commencing on a separate sheet).
- (j) Abstract of the Disclosure (commencing on a separate sheet).
- (k) Drawings.
- (l) Sequence Listing (see 37 CFR 1.821-1.825).

5. The disclosure is objected to because of the following informalities:

On page 1, line 3, the reference to the "preamble of Claim 1" should be deleted. See also, page 3, line 3.

Appropriate correction is required.

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*Claim Rejections - 35 USC § 112*

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 2, 5, 6, 1/4/5/6, 7, 8, 10, and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 2, the phrase "and/or" renders the claim indefinite, since the scope of the claim is not clear. For example, is applicant claiming an additional element that is refracting and reflecting?

In claim 5, there is no antecedent basis for "sight intensity distribution".

In claim 7, the language "diffractive optical system that the light intensity" is not clear.

In claim 8: In line 2, "annular" should be deleted to properly refer to the antecedent. Also, it is not clear what is meant by the phrase "in each case".

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In claim 10, the phrase "particularly a laser" renders the claim indefinite, since it is not clear whether or not applicant's intent is to positively claim the laser.

In claim 13, there is no antecedent basis for the phrases "the beam divider" and "the optical element".

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claim 15 is rejected under 35 U.S.C. 102(b) as being anticipated by Crabtree.

Crabtree teaches a laser light show device including a laser for generating a laser beam, and a diffractive element 26. Such is sufficient to anticipate claim 15.

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*Claim Rejections - 35 USC § 103*

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

11. Claims 1-4, 10, 11 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Everest.

Everest teaches a device for temperature measurement comprising a detector 54 for receiving heat radiation emanating from a measurement spot. An optical system images the heat radiation from the measurement spot, and a sighting arrangement identifies the position and size of the measurement spot by means of visible light which forms an annular marking on the object to be measured. The sighting arrangement includes a light source 68 and a beam splitter 56. The surface of the beam splitter 56 reflects infrared energy and transmits visible light.

Everest does not teach the sighting arrangement having a diffractive optical system (particularly a holographic element).

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Everest by replacing the beam splitter thereof with a diffractive optical system, such as a holographic element, since such a diffractive optical system and the beam splitter of Everest are equivalent and alternative devices for creating an image from a beam of light. One having ordinary skill in the art at the time the invention was made would recognize that any conventional beam splitting device could suffice in the device of Everest.

12. Claims 5 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Everest as applied to claims 1-4,10,11 and 13 above, and further in view of Japanese patent document 62-12848.

Everest teaches all that is claimed, as discussed in the above rejection of claims 1-4,10,11 and 13, except for the sighting arrangement including two circular markings.

Japanese patent document 62-12848 teaches a sighting arrangement including concentric annular circular markings.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Everest by arranging the sighting arrangement to include concentric annular circular markings, since Japanese patent document 62-12848



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teaches that such is old and well known in the art for providing sighting information to a user.

13. Claim 1/4/6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Everest as applied to claims 1-4,10,11 and 13 above, and further in view of Hollander et al. ('392) and Japanese patent document 62-12848.

Everest teaches all that is claimed, as discussed in the above rejection of claims 1-4,10,11 and 13, except for the light intensity distribution also including a further marking representing the center of the measurement spot.

Hollander et al. teaches that it is known in the art to identify a measurement spot by a marking identifying the center of the spot.

Japanese patent document 62-12848 teaches a sighting arrangement including concentric annular circular markings.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Everest by arranging the light intensity distribution to include a further marking representing the center of the measurement spot, since Hollander et al. teaches that "center" marking are old and well known for providing information to a user, and since Japanese

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patent document 62-12848 teaches that multiple marking can be utilized to mark a measurement spot to improve the accuracy of information provided to a user.

14. Claim 1/4/5/6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Everest and Japanese patent document 62-12848 as applied to claims 5 and 8 above, and further in view of Hollander et al. ('392).

Everest and Japanese patent document 62-12848 together teach all that is claimed, as discussed in the above rejection of claims 5 and 8, except for the light intensity distribution also including a further marking representing the center of the measurement spot.

Hollander et al. teaches that it is known in the art to identify a measurement spot by a marking identifying the center of the spot.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Everest by arranging the light intensity distribution to include a further marking representing the center of the measurement spot, since Hollander et al. teaches that "center" marking are old and well known for providing information to a user, and since Japanese

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patent document 62-12848 teaches that multiple marking can be utilized to mark a measurement spot to improve the accuracy of information provided to a user.

15. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Everest as applied to claims 1-4,10,11 and 13 above, and further in view of Hollander et al. ('392).

Everest teaches all that is claimed, as discussed in the above rejection of claims 1-4,10,11 and 13, except for the light intensity distribution on the object forming a cross-shaped marking.

Hollander et al. teaches a sighting arrangement wherein visible light is directed onto a surface to be measured. The visible light may be arranged in a multiplicity of shapes, dependent upon the desires of the user.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Everest by arranging the light intensity distribution on the object to be a cross-shaped marking, as a choice of design, since Hollander et al. teaches that it is known in the art to utilize a variety of shapes to identify a measurement spot.

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*Conclusion*

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

17. NOTICE OF CHANGE OF GROUP DESIGNATION AND TELEPHONE NUMBERS

This application has been reassigned to Art Unit 2859 and the following changes apply for this application. Please direct all written correspondence for this application to Art Unit 2859.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Andrew Hirshfeld whose telephone number is (703) 305-6619.

Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center receptionist whose telephone number is (703) 305-4900.



Andrew Hirshfeld  
Patent Examiner  
Group 2859  
September 28, 1998